

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
(EASTERN DIVISION)

LINDA LAMAACK,  Plaintiff,  v.  MENARD, INC.,  Defendant.	CASE NO. 6:22-cv-2058  <b>NOTICE OF REMOVAL OF CIVIL ACTION AND RULE 81 STATEMENT</b>
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COMES NOW, the Defendant, Menard, Inc. (“Menards”), by and through the undersigned counsel, and pursuant to 28 U.S.C. § 1441(a) and Local Rule 81(a), hereby gives notice of removal of this action from the Iowa District Court in and for Black Hawk County to the United States District Court for the Northern District of Iowa. In support thereof, Menards states:

**I. INTRODUCTION**

1. Menards respectfully submits that removal is proper because the requirements for federal jurisdiction are satisfied: (1) the parties are completely diverse, (2) the amount in controversy exceeds \$75,000, and (3) this Notice is timely filed.

**II. APPLICABLE STANDARDS**

2. Under 28 U.S.C. § 1441(a), an action of which the district courts of the United States have original jurisdiction may be removed to federal court if a timely petition for removal is filed. A state court action may be removed to federal court if the federal court would have had diversity jurisdiction over the action under 28 U.S.C. § 1332(a) at the time of the initial pleading and when the removal notice is filed. *Junk v. Terminix Int’l Co.*, 628 F.3d 439, 444 (8th Cir. 2010) (citing 28 U.S.C. § 1441(a)-(b)).

### **III. LOCAL RULE 81 STATEMENT**

3. As required by 28 U.S.C. § 1446(a) and Local Rule 81(a)(1), Menards provides the following information in support of the Notice for removal:

#### **A. State Court Pleadings and Counsel of Record**

4. Menards has reviewed the state court's electronic docket and determined that the following pleadings have been filed:

- a. Petition and Jury Demand (filed 10/27/2022);
- b. Original Notice (filed 10/27/2022); and
- c. Return of Service (filed 10/28/2022).

Copies of the above are attached to this Notice as required. There are no pending motions.

5. Counsel of record is as follows:

#### ATTORNEYS FOR PLAINTIFF

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#### **B. The Notice is Timely**

6. On October 27, 2022, Plaintiff commenced this action with the filing of the Petition in the Iowa District Court for Black Hawk Country. Plaintiff seeks compensatory damages, alleging negligence and res ipsa loquitur.

7. A Menards representative was personally served on October 28, 2022.

8. In accordance with 28 U.S.C. § 1446(b), Menards timely filed this Notice of Removal within 30 days of its receipt of service.

### **C. Complete Diversity Exists**

9. Plaintiff is a citizen of Iowa. *See* Petition ¶ 1. Menards is a Wisconsin corporation with its principal place of business in Wisconsin. *See* Petition ¶ 2. Therefore, Menards is a citizen of Wisconsin. 28 U.S.C. § 1332(c)(1) (a corporation is a citizen of the state of its incorporation and in the state of its principal place of business). Complete diversity is present in this case where a citizen of Iowa has sued Menards, a citizen of Wisconsin. *See* 28 U.S.C. § 1332(a)(1) (citizens of different states are diverse).

### **D. The Amount in Controversy Exceeds \$75,000**

10. The amount in controversy, under 28 U.S.C. § 1332, requires the sum or value of the lawsuit to exceed \$75,000 for the district court to have original jurisdiction. When a defendant seeks federal-court jurisdiction, “a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014). The defendant’s amount in controversy allegation “should be accepted when not contested by the plaintiff or questioned by the court.” *Id.* at 87. The defendant is not required to incorporate evidence into the notice of removal to support the allegation. *Id.* at 89. In the event “a defendant’s assertion of the amount in controversy is challenged...both sides submit proof and the court decides, by a preponderance of the evidence, whether the amount-in-controversy requirement has been satisfied.” *Id.* at 88. The controlling issue is “not whether the damages are greater than the requisite amount, but whether a fact finder *might* legally conclude that they are.” *Kopp v. Kopp*, 280 F.3d 883, 885 (8th Cir. 2002) (emphasis added).

11. Plaintiff's suit seeks to recover damages for an alleged "severe and permanent" head injury she sustained at a Menards store in Waterloo, Iowa. Plaintiff's claim for damages, includes, "but is not limited to, pain and suffering (past, present and future); loss of function of the mind and body and disability (past, present, and future), mental anguish (past, present, and future); medical expenses; and has sustained a loss of the enjoyment of life all to her detriment." A jury *might* legally conclude that Plaintiff's alleged damages exceed \$75,000. Furthermore, Plaintiff did not file the suit as an expedited civil action which would limit recovery to under \$75,000. Consequently, the true amount in controversy exceeds \$75,000, including compensatory and consequential damages.

12. Menards reserves the right to amend and/or supplement this Notice of Removal.

WHEREFORE, the Defendant, Menard, Inc., hereby removes the above captioned case from the Iowa District Court for Black Hawk County, bearing Case Number LACV146612, to the United States District Court for the Northern District of Iowa.

**Certificate of Service**

The undersigned certifies that the foregoing instrument was served upon the parties to this action by serving a copy upon each of the attorneys listed as receiving notice on 11/2/22, 2022, by CM/ECF.

/s/ Traci Haenzi

Original to:

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